

INTRODUCTION OF THE EMPLOYEE  
MISCLASSIFICATION PREVEN-  
TION ACT OF 2008

**HON. LYNN C. WOOLSEY**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 21, 2008*

Ms. WOOLSEY. Madam Speaker, Employers who misclassify their employees as independent contractors rob workers of needed pay and benefits and cost government at all levels substantial uncollected revenues—resources that are needed for vital government programs and services.

Yet misclassification is widespread. According to the General Accounting Office, at least 10 million workers in the U.S. are classified as independent contractors, and studies show that as many as 30 percent of employers misclassify their workers. Why do they do it? They misclassify to avoid the cost of payroll taxes, insurance premiums and mandated benefits, and to boost their profits. In fact, the Department of Labor has concluded that the number one reason for misclassification is to avoid the payment of workers compensation premiums, as well as workplace injury and disability-related disputes.

The cost is high for employees, who when misclassified, lose out on employee benefits, including those that are exempt from taxation or receive tax-deferred benefits, such as retirement, life insurance, accident and health coverage, qualified tuition reduction programs, benefits under a cafeteria plan, educational assistance programs and dependent care assistance programs. Additionally misclassified workers are not afforded even minimal work-force protections, including workers compensation, minimum wage, overtime pay, health and safety requirements and the right to join a union. And eligibility for Medicare, Social Security and Unemployment compensation is negatively affected as well.

The cost to society is high as well, and it is estimated that billions of dollars are lost each year; money that would otherwise be paid to the States and the Federal Government in taxes. Despite, this enormous problem, the Department of Labor (DOL) has failed not only to crack down on this practice by enforcing current laws, but has failed to coordinate with other agencies to address the issue. In addition, it is unclear under the law which standard should be employed for determining who is and who is not an independent contractor.

The Employee Misclassification Prevention Act of 2008, which Representatives ANDREWS, MICHAUD, MILLER and I are introducing today attacks the problem of misclassification head-on by:

Clarifying that employee records must reflect the worker's accurate status or classification as an employee or non-employee and that it is a violation of the Act to make an inaccurate classification.

Requiring employers to provide employees and non-employees notice of their status and notice of their rights to challenge that classification.

Providing additional penalties for misclassification as well as increased penalties for violations that are willful or repeated.

Requiring state unemployment insurance agencies to conduct audits to identify employers who are misclassifying employees.

Mandating the Department of Labor (DOE) to develop a system to track and monitor States' effectiveness in identifying employers who misclassify.

Explicitly allowing DOL and the Internal Revenue Service (IRS) to refer incidents of misclassification to one another; and

Requiring DOL to perform targeted audits focusing on employers in industries that frequently misclassify employees.

We know that there are good employers out there who pay their employees fair and honest wages. This bill is to protect bona fide employees from the 30 percent who don't.

EARMARK DECLARATION

**HON. JIM MCCRERY**

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 21, 2008*

Requesting Member: Congressman JIM MCCRERY.

Bill Number: H.R. 5658, FY2009 National Defense Authorization Act.

Account: Research and Development, Army.  
Legal Name of Requesting Entity: Biomedical Research Foundation of Northwest Louisiana.

Address of Requesting Entity: 1505 Kings Hwy., Shreveport, LA 71103.

Mr. MCCRERY. Madam Speaker, I submit the following:

Description of Request: This \$1.2M authorization authorizes appropriations for the continued research and development of EMB001, a novel treatment for Post Traumatic Stress Disorder. The Biomedical Research Foundation in collaboration with Embera Neuro Therapeutics, Inc. (Shreveport, LA) are seeking federal assistance to develop a collaborative research plan with the Department of Defense to test the effectiveness of EMB001 for treatment of post traumatic stress disorder (PTSD) and related neuropsychiatric disorders. Cost breakdown: \$850K Direct Costs associated with research initiative, \$350K for Overhead/Personnel.

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MISCLASSIFICATION PREVEN-  
TION ACT OF 2008

**HON. ROBERT E. ANDREWS**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 21, 2008*

Mr. ANDREWS. Madam Speaker, along with my colleagues Congresswoman LYNN WOOLSEY, Chairman GEORGE MILLER, Congressman MIKE MICHAUD, Congressman MCDERMOTT and almost all of the Democratic Members of the Committee on Education and Labor, I rise today to introduce the Employee Misclassification Prevention Act of 2008, EMPA.

The egregious practice of misclassifying workers as independent contractors needs to end. EMPA is pro-employee, pro-employer and pro-taxpayer. The bill will protect employee benefits, remove incentives for employers to misclassify their workers, and ensure that bad employers don't line their own pockets with unpaid payroll taxes.

In the last decade we have seen a questionable increase in the amount of individuals classified as independent contractors. In 1984, which was the last time a comprehensive misclassification study was conducted by an oversight agency on this issue, the Internal Revenue Service (IRS) estimated that 15 percent of employers misclassified 3.4 million workers as independent contractors. As a result, \$1.6 billion or \$2.72 billion in inflation-adjusted 2006 dollars in Social Security, unemployment and income taxes was stripped from the hands of the Government and went into the pockets of tax evaders. Furthermore, the 3.4 million workers who were misclassified were stripped of many of their basic, but essential, employee rights.

In some cases, classifying an individual as an independent contractor is quite right and quite appropriate. If someone is retained for a limited purpose, usually for a limited time, to do a specific job function for an employer, it is quite necessary and appropriate that that person not be treated as an employee for reasons of flexibility, and for reasons of fair compensation.

However, when an individual is considered an independent contractor by their employer, but is told what to do, has no discretion over how to conduct the affairs of the business, and whose compensation is fixed and set by the employer, it is our duty as Members of Congress to protect this employee's rights under Federal law.

There are millions of workers, who mow lawns, drive trucks, work in garment linen factories, and serve food in restaurants that I would consider an employee; nonetheless, these hardworking individuals are exploited and misclassified by their employers seeking to evade paying taxes. If any American worker is told what to do, when to do it, how much money they are going to make, what the work rules are, what they can and cannot do by their employer then the law should require they be classified as an employee and receive all of the benefits of the 40-hour work week, as well as worker safety protections, pension and healthcare protections and other worker protections provided to them under Federal law.

I encourage everyone to join me, my co-sponsoring colleagues, as well as the AFL-CIO, Change to Win, United Brotherhood of Carpenters, International Brotherhood of Teamsters, the Laborers International, UNITE HERE, the National Employment Law Project, and others and support EMPA to protect workers across the country from employers who are only interested in making a profit for themselves at the expense of the American workers and taxpayer.

EARMARK DECLARATION

**HON. DON YOUNG**

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 21, 2008*

Mr. YOUNG of Alaska. Madam Speaker, I submit the following:

Bill Number: H.R. 5658, Army, RDT&E, Line 6, PE # 0602120A.

Legal name and address of entity receiving earmark: Alkan Shelters, LLC, 1701 S. Cushman St., Fairbanks, AK 99701.